

PATENT COOPERATION TREATY

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:
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PCT

**WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY**

(PCT Rule 66)

Date of mailing (day/month/year)	17 FEB 2006
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Applicant's or agent's file reference AY/DC/WO/2004.1427	REPLY DUE	within TWO MONTHS from the above date of mailing
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International application No. PCT/SG2004/000237	International filing date (day/month/year) 4 August 2004	Priority date (day/month/year) 4 August 2004
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International Patent Classification (IPC) or both national classification and IPC:

INT. CL. C08F 2/22 (2006.01) C08F 220/02 (2006.01) G02C 7/04 (2006.01)
A61F 9/00 (2006.01) C08F 220/10 (2006.01)

Applicant

AGENCY FOR SCIENCE, TECHNOLOGY AND RESEARCH et al.

1. The written opinion established by the International Searching Authority: *17/02/2006 MC*
 is is not
 considered to be a written opinion of the International Preliminary Examining Authority.
2. This second (second, etc.) opinion contains indications relating to the following items:
 - Box No. I Basis of the opinion
 - Box No. II Priority
 - Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - Box No. IV Lack of unity of invention
 - Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - Box No. VI Certain documents cited
 - Box No. VII Certain defects in the international application
 - Box No. VIII Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.

When? See the Reply Due date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the Final Date by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. If no response is filed by 1 month before the Final Date, the international preliminary examination report will be established on the basis of this opinion. Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least 3 months before the Final Date by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis. For an informal communication with the examiner, see Rule 66.6.
4. The FINAL DATE by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is 4 December 2006

Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer ALBERT S. J. YONG Telephone No. (02) 6285 2160
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WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/SG2004/000237

Box No. I	Basis of the opinion
<p>1. With regard to the language, this opinion has been established on the basis of:</p> <p><input checked="" type="checkbox"/> The international application in the language in which it was filed;</p> <p><input type="checkbox"/> A translation of the international application into , which is the language of a translation furnished for the purposes of:</p> <p><input type="checkbox"/> international search (under Rules 12.3(a) and 23.1 (b))</p> <p><input type="checkbox"/> publication of the international application (under Rule 12.4(a))</p> <p><input type="checkbox"/> international preliminary examination (Rules 55.2(a) and/or 55.3(a))</p>	
<p>2. With regard to the elements of the international application, this opinion has been established on the basis of <i>replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."</i>):</p> <p><input checked="" type="checkbox"/> the international application as originally filed/furnished</p> <p><input type="checkbox"/> the description: pages , as originally filed/furnished pages , received by this Authority on with the letter of pages , received by this Authority on with the letter of</p> <p><input type="checkbox"/> the claims: pages , as originally filed/furnished pages , as amended (together with any statement) under Article 19, pages , received by this Authority on with the letter of pages , received by this Authority on with the letter of</p> <p><input type="checkbox"/> the drawings: pages , as originally filed/furnished pages , received by this Authority on with the letter of pages , received by this Authority on with the letter of</p> <p><input type="checkbox"/> a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.</p>	
<p>3. <input type="checkbox"/> The amendments have resulted in the cancellation of:</p> <p><input type="checkbox"/> the description, pages</p> <p><input type="checkbox"/> the claims, Nos.</p> <p><input type="checkbox"/> the drawings, sheets/figs</p> <p><input type="checkbox"/> the sequence listing (<i>specify</i>):</p> <p><input type="checkbox"/> any table(s) related to the sequence listing (<i>specify</i>):</p>	
<p>4. <input type="checkbox"/> This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).</p> <p><input type="checkbox"/> the description, pages</p> <p><input type="checkbox"/> the claims, Nos.</p> <p><input type="checkbox"/> the drawings, sheets/figs</p> <p><input type="checkbox"/> the sequence listing (<i>specify</i>):</p> <p><input type="checkbox"/> any table(s) related to the sequence listing (<i>specify</i>):</p>	

WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/SG2004/000237

Box No. V	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
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1. Statement

Novelty (N)	Claims 1-24	YES
	Claims	NO
Inventive step (IS)	Claims	YES
	Claims 1-24	NO
Industrial applicability (IA)	Claims 1-24	YES
	Claims	NO

2. Citations and explanations:

INVENTIVE STEP

Claims 1-24: In distinguishing the present invention from the cited art, the Attorney asserts that the interconnected pores in the polymer are formed by polymerizing a microemulsion comprising, among other components, a drug. Further, the Attorney argues that interconnected pores (as opposed to "other types of pores") are not mentioned in the cited art.

However, it should be noted that the loading of the drug at the polymerisation stage of the polymer is not defined in independent claims 17 and 23. As presently drafted, the claims encompass polymers wherein the drug is loaded after the polymer is formed.

Moreover, the presence of interconnected pores, as opposed to discrete pores and voids, is not considered to involve an inventive step because it has not been shown that these other pores are incapable of harbouring drugs and releasing them in a controlled manner. For these reasons, the claims are considered to lack an inventive step.